IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

OP.No. 8086 of 2001(K)

PETITIONER:

DR.K.MURALEEDHARAN
MANAGER (AH)
KERALA LIVESTOCK DEVELOPMENT BOARD
DHONI FARM
PALAKKAD.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI
SRI.T.P.VARGHESE
SRI.PHILIP T.VARGHESE

RESPONDENTS:
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1. THE MANAGING DIRECTOR,
KERALA LIVESTOCK DEVELOPMENT BOARD
'GOKULAM', PATTOM P.O.,
THIRUVANANTHAPURAM.

2. DR.N.NAGASUNDRAM, S/O.MUNIYANDI PILLAI,
MANAGER (AH)
KERALA LIVESTOCK DEVELOPMENT BOARD
'GOKULAM', PATTOM P.O.,
THIRUVANANTHAPURRAM.

ADDL. 3. DR.K.LINGAM,
MANAGER (ANIMAL HUSBANDRY)
KERALA LIVESTOCK DEVELOPMENT BOARD,
MUVATTUPUZHA.

ADDL. 4. DR.JOSE JAMES,
MANAGER (ANIMAL HUSBANDRY)
KERALA LIVESTOCK DEVELOPMENT BOARD,
PATTAM P.O., THIRUVANANTHAPURAM.

(ADDITIONAL R3 AND R4 ARE IMPLEADED AS PER ORDER DT. 15.11.2001 AS C.M.P. 39367/2001)

BY ADV. SRI.BABY ISAAC ILLIKKAL,SC, KLSDB (FOR R1)
SRI.T.V.GEORGE (FOR R2)
SRIRAJESH MATHEW
SMT. K.SUNITHA VINOD, SC, KLSDB
SRI.MILLU DANDAPANI
SMT.SUMATHI DANDAPANI (SR) (FOR R1)

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NOS.52312/2001, 13086/2001 & 1788/2003 IN OP NO.8086 OF 2001

DISMISSED

SD/-
27.9.07. THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE G.O. NO.188/92/AB DTD. 1.7.1992.

EXT. P2: COPY OF G.O.M.S. NO.158/91/AD DTD. 31.5.91.

EXT. P3: COPY OF THE LAWYER'S NOTICE DTD. 20.2.2001 SENT ON BEHALF OF THE PETITIONER.

EXT. P4: COPY OF THE ORDER DTD. 20.9.2001 ISSUED BY R1.

EXT. P5: COPY OF THE SPECIAL RULES INTRODUCED BY THE RESPONDENT BOARD.

EXT. P6: COPY OF THE AUDIT ENQUIRY NO.22 DTD. 24.7.1998.

EXT. P7: COPY OF ORDER NO.GO(MS) NO.225/99/AD ISSUED BY THE KERALA GOVT.

RESPONDENT'S EXHIBITS:

EXT. R2(A): COPY OF THE GOVERNMENT ORDER G.O.(MS) NO.225/99/AD DATED 30/7/99.

/TRUE COPY/

P.A. TO JUDGE

JP

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.Nos.8086 of 2001-K & 36760 of 2001-A

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Dated this the 27th day of September, 2007.

JUDGMENT

1. These writ petitions relate to the claim of the petitioner for placement in the category of Deputy General Manager in the Kerala Live Stock Development Board, hereinafter referred to as the "Board". Additional respondents 3 and 4 in O.P.8086/2001 are respondents 3 and 4 in O.P.36760/2001. As admitted by the respondents, the second respondent in O.P.8086/2001 Dr.N.Nagasundram was promoted as Deputy General Manager earlier to respondents 3 and 4 therein. He was so promoted on 30-3-2001, going by his counter affidavit.

2. The petitioner is admittedly senior to the private

respondents in the category of Assistant Manager and Deputy Manager, while he was promoted to the category of Manager only on 31-7-2000.

3. The issue on which the petitioner was denied promotion to the category of Deputy General Manager in preference to the private respondents is that he had not earned two years of minimum experience in the feeder category of Manager in the AH Wing, though he had satisfied all other qualifications as contained in Ext.P4 Government Order. The reason for excluding him from the category of Manager, AH Unit until 31-7-2000 was that he had attained 50 years of age and was, therefore, not entitled to an order of exemption from the Government regarding acquisition of certain test qualifications required in terms of Ext.P1 G.O.Ms.No.188/1992/AD dated 1st July, 1992. But the fact remains that the petitioner had entered service in 1983 and Ext.P1 which is only an executive

order of the Government could not be made retrospective and applicable to those who are already in service. That apart, while requiring the acquisition of test qualifications, it has been categorically stated in Ext.P1 that in the case of employees who are appointed on or after the date of incorporation of that clause, the test will be obligatory and no extension of time for acquiring test qualifications will be granted. As a necessary corollary, it also means that for those who were appointed before the date of incorporation of that clause the acquisition of test qualifications could not be treated as obligatory. This means that the exclusion of the petitioner from the zone of consideration for being a Manager by promotion in preference to the private respondents was wholly illegal. His exclusion is not attributed to any reason in the form of a selection or otherwise. If that be so, gross injustice has resulted to a person working in the Veterinary Sciences and involved in the Live Stock Development. As a

necessary consequence, he ought to be treated as having been entitled to be a Manager on the date of promotion of the second respondent as Manager and as a further consequence, as entitled to be promoted as Deputy General Manager, at least, with effect from the date on which the second respondent has been promoted as Deputy General Manager. His such entitlement is hereby declared.

4. But, with the passage of time, the petitioner has retired in February, 2005 without being able to discharge the duties and responsibilities of the office of the Deputy General Manager after 19-12-2003 from the date on which alone he has been duly promoted. Therefore, he would be entitled to a notional fixation of his pay as Manager with effect from the date on which the second respondent was promoted as Manager and as Deputy General Manager with effect from the date on which the second respondent

was promoted as Deputy General Manager. His pensionary benefits will accordingly be revised in terms of the aforesaid declarations and any arrear found due on that count shall be released within an outer limit of four months from the date of receipt of a copy of this judgment.

The writ petitions are allowed to the above extent. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.Ps.8086/2001K & 36760/2001-A

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JUDGMENT

Dated: 27th September, 2007.